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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of Part 90 of the Commission's)
Rules to Facilitate Future Development of)
SMR Systems in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030,
RM-8029

and

)
Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

To: The Commission

COMMENTS

Joriga Electronics, Inc. (Joriga), by its attorneys, hereby submits its
Comments in the above-captioned matter. Joriga opposes the adoption of the
proposals contained within the FNPRM. Insofar as Joriga's Reply Comments to the
matter from which this FNPRM was derived are relevant, those Reply Comments are
hereby incorporated herein, see, attached.

Joriga would like to voice its opposition to the Commission plan to divide the
country along Metropolitan Trading Area lines and auction 200 of the currently-
allotted SMR frequencies to the winning bidder. It is Joriga's belief that such a

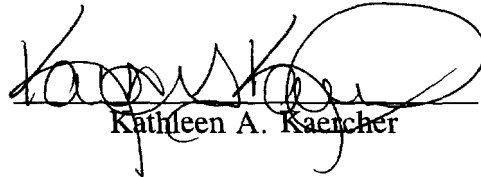
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plan is impractical and unworkable, and if attempted, would injure the already established SMR industry.

Respectfully submitted,
JORIGA ELECTRONICS, INC.

By



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Dated: January 5, 1995

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n) and 332) GN Docket No. 93-252
of the Communications Act)
)
Regulatory Treatment of Mobile Services)

To: The Commission

REPLY COMMENTS

Joriga Electronics, Inc. (Joriga) by and through counsel hereby replies to the comments filed in the above captioned proceeding. Joriga applauds the Commission's efforts to devise comprehensive rules for the licensing and operation of SMR and ESMR facilities throughout the United States. Joriga is grateful for this opportunity to assist the Commission in its efforts.

Joriga is the owner and operator of SMR facilities in and about the Phoenix, Arizona market area. It has kept abreast of the changes in the marketplace caused by the advent of ESMR service and the Commission's efforts in bringing this new service to the market. However, following review of Nextel Communications, Inc.'s (Nextel) comments filed within this rule making, Joriga now has doubts about ESMR services, at least as they apply to Nextel and its most recent request for additional concessions to bring forth the service.

Mistakes Were Made

Joriga has been under the impression, which it believes was shared by the Commission, that the grant of Fleet Call, Inc's rule waiver in 1991 created a sufficient environment to allow ESMR to come to market. In fact, given the extreme advantages arising out of that Commission decision, of which Nextel has not been slow or meek in accepting and exploiting to the maximum, it appeared to Joriga that Nextel was going to be unrelenting in bringing ESMR to the market. It appears now that Joriga, and presumably the Commission, were wrong.

Nextel's system appears to be suffering technical difficulties due to adjacent channel interference and co-channel interference. Joriga suspects that the broadband, digital receivers used in Nextel's design simply are not accommodating to anything other than a pristine environment. This is curious. Joriga cannot fathom why Nextel would design a system which could not withstand normal adjacent channel operation to operate in the present radio environment. It appears, therefore, that Nextel made a grave mistake.¹

Joriga sympathizes with Nextel in its present difficulties but does not believe that the sweeping changes envisioned within Nextel's proposals are the proper

¹ The mistake could have been either in design or business strategy. Perhaps Nextel believed it could purchase all of the adjacent channel systems and has been thwarted in its progress. Therefore, its proposal could be intended to accomplish before the Commission what it has been unable to accomplish across a negotiating table.

solution to Nextel's individual problems. Joriga believes that Nextel's claimed problems are suffered only by Nextel, since no other ESMR has claimed to be similarly suffering. The opinion that the problems are unique to Nextel is further supported by the existence in the market of a digital SMR system, the General Electric EDACS system, which does not exhibit the same level of vulnerability to interference.

Since it appears that Nextel's problems are unique to Nextel and since it further appears that alternative solutions exist, it would be a huge mistake to grant Nextel's proposals that would require the industry to join together to bail out the largest SMR operator in the Country. That mistake is made larger still by the fact that bailing out Nextel would injure all other SMR operators' businesses.

Nextel Had Its Chance

The bold proposal put forth by Nextel and accepted in part by the Commission, which created a chance for ESMR to be born, amounted to a special opportunity. Armed with its opportunity, Nextel took on the SMR industry and the financial community in a combined effort to raise funds, buy systems, and develop its technology. Joriga does not remember such an opportunity ever being provided to an operator.

When the Commission acted to grant Fleet Call, Inc.'s waiver, it probably did not remotely understand the events which would follow. The public offerings, the equity sales, the mass assignment of licenses from Motorola to the ESMR carriers, the flood of speculative applications, the tripling in size of wait lists, the Federal Trade Commission involvement in application mills, and the rush to enjoy the benefits of the new finder's preference program all followed on the heels of its decision. And leading the hustle and bustle to market was Nextel, selling its shares to Motorola and Matsushita and MCI. Billions of dollars flowed into Nextel's open and hungry coffers.

Nextel had its chance to climb to the top of the telecommunications industry and strike it rich beyond anyone's early expectations. The Commission gave it that chance. But Joriga finds no gratitude for the opportunity in Nextel's latest comments. Rather, Nextel has come before the Commission, in effect, blaming everyone, including the Commission, for the fact that its system does not perform as expected.

Its comments speak not to its great chance, but to its failure in making the most of that chance to bring a new, viable SMR service to the marketplace. Instead, gathering up its collective assets and financial clout, Nextel claims that it is entitled to more concessions from the industry – concessions it claimed in its original

request for waiver that it would never require. To Nextel's newest request, the Commission should reply with a polite, but resounding, "no".

The Commission should not deny Nextel's proposals for their ingratitude. After all, the Commission is not supposed to have feelings that might get hurt. And Nextel's comments should not be rejected for the simple reason that it squandered its earlier opportunity. Nextel's proposal should be rejected because it is so self-serving and narrowly scoped in its benefits, that it is highly unlikely that anyone, other than Nextel, would have any hope of benefitting from enactment of the proposed reallocation.² Providing such special treatment to a single operator cannot be in the public interest and Joriga is sure that it will not benefit by the Commission's integration of Nextel's proposals into the Commission's Rules.

Legal Hurdles

The Commission could easily deny Nextel's proposal on purely logical grounds, including the Commission's desire to act with fundamental fairness within the public interest. It is doubtful that Nextel's proposals could survive even a cursory examination to determine their value to the public interest.

² Indeed, the Commission, having seen the original offer of proof regarding Nextel's proposed system, and becoming apprised of the failure of the same, should demand greater proof that Nextel, were it given what it has asked for, would be capable of then providing service acceptable to the public.

Nextel has only claimed to be serving 5,000 ESMR end users. The Commission should compare that number to the number of SMR end users who will be affected by the implementation of the plan. A simple cost-benefit analysis shows that the Commission should dismiss Nextel's Comments. The cost to operators, end users and the Commission is too high to justify such actions on behalf of a limited number of beneficiaries.

Nextel's proposals further fail to demonstrate that the Commission is able to enact the plan without the need to engage in spectrum auctions. It appears that 47 U.S.C. §309(j) will require that auctions would be required prior to proceeding to grant of any exclusive ESMR authority within affected MTAs. Joriga's impression is caused by a careful reading of Nextel's proposals, which, if enacted, would necessarily create mutually exclusive applications for newly reallocated spectrum.

It is, therefore, unclear whether Nextel might accept this outcome or whether its comments are directed solely at its receipt of additional, exclusive spectrum by virtue of nothing more than its presence in given markets. Nextel's comments are silent on this point, because it was obviously not considered.³ If

³ It may also be that Nextel has, in fact, contemplated this outcome and supports this result. Were this to be the case, Joriga respectfully requests that the Commission dismiss Nextel's comments for Nextel's failure to be complete in its analysis in the first instance. Such a failure, even if inadvertent, places an undue burden on commenting parties and the Commission to discern the true nature of a proposal, and unnecessarily challenges one's ability to make meaningful comment. Whether Nextel should be provided an opportunity to put forth its proposals again

Nextel does not intend this result, the Commission should allow Nextel to withdraw its comments and proposals, without effect on the outcome of this proceeding.

Finally, Nextel has one more problem with which Joriga believes that the Commission might choose to deal. Nextel appears to be under the mistaken impression that it is no longer an SMR operator. This is obviously incorrect. Most of Nextel's customers are receiving analog SMR dispatch services. Its licenses are granted under Part 90 of the Commission's Rules. It accepted its status when the Commission granted Fleet Call, Inc. the waiver which created ESMR back in 1991. And nothing of any significance has occurred, legally or otherwise, which has altered Nextel's identity as an SMR.

It could be that Nextel has made a mistake that many companies do. They advertise to the public that they will produce a product or a service that will compete with some other type of manufacturer and in the flurry of marketing, the company may come to believe that its products are equal to those produced by their claimed competition. For example, a bicycle company might tell consumers to buy their products and leave their cars at home. But that advertising and marketing strategy doesn't make a bicycle a car. They are two distinctly different vehicles, even if both are held to similar rules of the road.

will, naturally, be within the full discretion of the Commission.

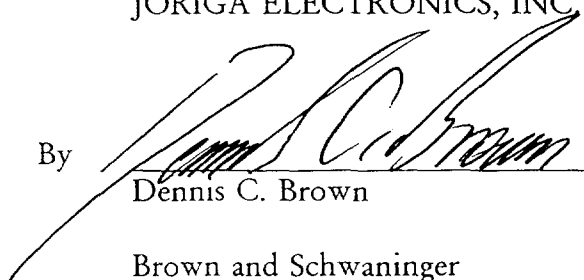
The Commission is not required and should not build a new freeway system for Nextel. Nextel is relegated to the path it chose when it decided to employ existing, allocated spectrum for operation of its new system. Nor may it transform itself by simply installing a new horn or light on the front of the bike. Ultimately, Nextel is peddling the same thing as all other SMR operators.

Conclusion

Joriga Electronics, Inc. respectfully requests that the Commission reject summarily Nextel's proposal regarding frequency allocation for the exclusive benefit of ESMR operators. Nextel has not proven that the grant of such a request is in the public interest.

Respectfully submitted,
JORIGA ELECTRONICS, INC.

By

A handwritten signature in dark ink, appearing to read "Dennis C. Brown", is written over a horizontal line.

Dennis C. Brown

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Dated: July 11, 1994

CERTIFICATE OF SERVICE

I, Nakia M. Marks, hereby certify that on this 11th day of July, 1994, I caused a copy of the attached Reply Comments to be served by hand delivery or first-class mail, postage prepaid to the following:

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